

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO. 53 OF 2007**

Peter Cotz Cirksena,
R/o. Reinhardtstr – 1,
1-Berlim-42, Tempelhof,
Germany,
Now at Piquen Chinvar,
Anjuna, Bardez-Goa.
Presently undergoing sentence
at Sub Jail Sada, Vasco.

.... Petitioner

V/s

S T A T E

.... Respondent

Mr. Arun Bras De Sa, Advocate for the Petitioner.
Mr. C.A. Ferreira, Public Prosecutor for the Respondent.

CORAM : N.A. BRITTO, J.

DATE : 26th OCOBER, 2007

ORAL ORDER :

Heard Shri Arun Bras De Sa, the learned Counsel on behalf of the
Petitioner/Accused and Shri C.A. Ferreira, the learned Public Prosecutor on
behalf of the Respondent/Complainant.

2. This revision is directed against the judgment dated 13/06/2007 of the
learned Additional Sessions Judge, Panaji upholding the conviction and
sentence imposed upon the petitioner under Sections 468, 471, 419 and 420
I.P.C. by judgment and order dated 9/01/2007 of the learned JMFC, Mapusa.

3. Both the Courts below have convicted the accused. In other words this revision is against concurrent findings of facts. Broadly stated, the revisional Court will entertain a revision on facts where either there is no evidence to support the finding or where finding arrived at is perverse or such as no reasonable man would have arrived at on the evidence produced. Revisional jurisdiction can be exercised in order to prevent a gross and culpable failure of justice but certainly cannot be converted into appellate jurisdiction since that would be bringing in conflict one provision of the Code of Criminal Procedure with another. As stated by the apex Court in *State of Maharashtra V/s Jagmohan Singh Kuldip and Ors. (2004 (7) SCC 659)* revisional jurisdiction cannot be exercised as second appellate power and it is impermissible for the High Court to embark upon an in depth reexamination of oral and medical evidence and come to a conclusion contrary to the consistent one reached by the two Courts below.

4. In short, the accused was charged and tried for the said offences with the allegation that he encashed three fabricated traveller cheques of US dollars 500 each with three different authorized money changers on three different dates representing that he was Mr. Baerre Andreas Tobaecowda, an Australia national being holder of passport no. E0648704, the first traveller cheque was encashed on 15/03/2003 with Alfred Menezes/PW4, the second cheque on 16/03/2003 with Xavier Rodrigues/PW3 and the third cheque on

17/2/2003 with Alexandre Sequeira/PW1. The other traveller cheque encashed by the accused on 19/2/2003 with the said Alexander Sequeira/PW1 is presumed to have been genuine as it was not returned by Cox and Kings by whom they were purported to have been issued. After encashment of the said cheques all of them sent the same for payment to Cox and Kings but they refused to make payment and returned the same because they were fabricated. Patrick Misquita/PW6, the Senior Executive Officer of Cox and Kings has confirmed this position and has stated that the said three traveller cheques sent by Joyelyn Guest House(PW3), Mario General Stores (PW1) and Menezes Super market (PW4) were returned back to them as they were fake.

5. The said three traveller cheques were attached by the Investigation Officer PSI Naik/PW7 and sent for the opinion of the handwriting expert and Shri Gupta/PW5 who examined them has opined that they were signed by the accused. In other words it is the accused who had signed as Baerre Andreas Tobaecowda on the said traveller cheques. The accused admitted that his specimen signatures were taken and he had signed in the manner as told to him by the Investigation Officer. However, it is relevant to note that the said Gupta/PW5, the handwriting expert, has opined that the accused had freely signed in the name of the said Baerre Andreas Tobaecowda.

6. All the three witnesses namely PW1, PW3 and PW4 before whom the accused went to encash the said three cheques have identified the accused as the person who encashed the traveller cheques with them and there is no reason whatsoever as to why their evidence ought not to have been accepted. There was no reason for them to falsely implicated the accused as the person who came with the said fabricated traveller cheques in the name of Baerre Andreas Tobaecowda and encashed the same representing that he was the said Baerre Andreas Tobaecowda. It is true that in the raid conducted in the house of the accused no passport of the said Baerre Andreas Tobaecowda was found which passport was otherwise produced by the accused, to the said three witnesses at the time of encashing the said traveller cheques but that by itself would be insufficient to discard the evidence of identity of the accused by them as the person who came and encashed the said three traveller cheques. It appears that the question of identity of the accused was taken on behalf of the accused, before the first appellate Court, and the first appellate Court observed that there was no need for the prosecution to have conducted any test identification parade because the accused was with the said three witnesses for sufficiently long to have enabled them to see the features of the accused. In fact what is required to be done at the time of encashing the traveller cheques, as explained by the learned Public Prosecutor, is that first traveller cheque is to be presented, than signed by the person who presents the same and the identity of the presenter has also to be established and it is

only after the signature is tallied with the signature existing on the traveller cheque that the traveller cheque is allowed to be encashed. An encashment certificate by the person who presents the said cheque is also required to be signed and all this certainly brings the person who comes to exchange the traveller cheques in contact with the person exchanging the traveller cheque for sufficiently long to enable the latter retain the impression or image of the former. In the circumstances, the contention that the identification of the accused, in the absence of a test identification parade, could not be accepted, was rightly rejected.

7. Counsel on behalf of the petitioner has stated that Patrick Mesquita/PW6 did not produce any memorandum of return of the said traveller cheques nor identified the said cheques which were seized and produced before the Court. It is not known whether there is any practice of returning the cheques by Cox and Kings along with a memorandum as done by Banks, but there is nothing in the cross-examination of the said witness to that effect. It is true that the said cheques which were before the Court were not shown to him but one fact remains that he has clearly stated that the said three cheques presented by the said three witnesses were found to be fabricated and thereby has corroborated the versions given by the said 3 witnesses. The prosecution did not examine him as it was required and therefore it was the duty of the learned Magistrate to have stepped in and

shown to him the said traveller cheques. Learned Counsel points out that in his cross-examination, Mesquita/PW6 has stated that he was not personally conversant with the facts of the case but that stray sentence in my view cannot be read in isolation. His evidence has got to be read as a whole and when so read sufficiently corroborates the versions of the said three witnesses.

8. The evidence of the said three money changers namely PW1, PW3 and PW4 coupled with the evidence of the Mesquita/PW6, the Senior Executive of Cox and Kings as well as the opinion given by Gupta/PW5 the Government Examiner of Questioned Documents of which reliance has been placed by both the Courts below was more than sufficient to conclude that it is the petitioner/accused who had presented the said three cheques in the name of Baerre Andreas Tobaecowda and representing as Baerre Andreas Tobaecowda had encashed them and thus had committed the offences for which he was charged.

9. In my view, the concurrent findings given by both the Courts below therefore could not be faulted. I find there is no merit in this revision and accordingly, the same is hereby dismissed.

N.A. BRITTO, J.

NH/-